SINGAPORE REPORTS

AUSTRALIAN MASTER BUILDERS CO. PTY. LTD. v. NG TAI TUAN

[O.C.J. (Chan Sek Keong J.C.) December 8, 1987]

[Singapore – Suit No. 6127 of 1985]

Civil Procedure – Transfer of case from High Court to District Court – Application for – Whether High Court has jurisdiction to order transfer – Whether present action should be transferred – Subordinate Courts Act (Cap. 321, 1985 Ed.), s.38.

The plaintiffs commenced this action on June 25, 1985 for recovery of $65,215.25 from the defendant for goods sold and delivered to the defendant. The plaintiffs applied for summary judgment. The defendant admitted liability for $10,848.00 and judgment was entered against the defendant for the sum of $10,848.00.

The action was set down for trial on July 21, 1986. Thereafter, the plaintiffs reduced their claim to $50,000.00 by abandoning the excess claim of $4,367.25 so as to bring their claim within the jurisdiction of the District Court. They applied for a transfer of the case to the District Court.

The two issues before the High Court were (1) whether the High Court has jurisdiction to make such transfer; and (2) whether it was appropriate to transfer the present case.

Held, granting the application: (1) section 38 of the Subordinate Courts Act gives the High Court an unfettered discretion to transfer at any time any proceedings commenced by writ of summons to the District Court. The words "notwithstanding any other provisions of this Act" have the effect of vesting in the High Court the jurisdiction to increase the ordinary civil jurisdiction of the District Court;

(2) each application for transfer must be decided on its own merits. The present action is for the balance of the price of goods sold and delivered and the defence is a denial of delivery. These circumstances justify a transfer of the present action.

APPLICATION.

Chew Wai Kuen (Ms) for the plaintiffs.
Goh Aik Chew for the defendant.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an application by the plaintiffs to transfer all further proceedings in this action to the District Court for trial.

The plaintiffs commenced this action on June 25, 1985 for recovery of $65,215.25 from the defendant for goods sold and delivered to the defendant. The plaintiffs applied for summary judgment on July 29, 1985 and the defendant on August 5, 1985 admitted liability for $10,848.00 but counterclaimed for the balance of $17,989.50 after offsetting the said liability. Numerous and lengthy affidavits were filed by both parties and on November 29, 1985, the Registrar gave leave to the plaintiffs to enter judgment for $10,848.00 and ordered the defendant to furnish security for the balance of $54,367.25.

Since then, interrogatories have been served on and answered by the defendant, directions for setting down the action for trial have been taken, and affidavits verifying lists of documents have been filed. The action was set down for trial on July 21, 1986.

The plaintiffs have now decided to reduce their claim to $50,000 by abandoning the excess claim of $4,367.25 so as to bring their claim within the jurisdiction of the District Court. The grounds for this application are: (1) a trial in the District Court would take place earlier and (2) at least six other actions have been instituted in the District Court against the defendant, which actions might be heard before this action. It was also contended that a transfer was advantageous to the defendant because the claim would be reduced and costs would also be saved.

Notwithstanding these apparent advantages, the defendant has objected to the application on the ground that the plaintiffs' claim was still in excess of $50,000 since the plaintiffs had already obtained judgment for $10,848.00. This was a rather perplexed form of argument as the amount of $10,848.00, having been adjudged in favour of the plaintiffs, could not possibly be regarded as a claim.

The question therefore is whether this court has the jurisdiction to order a transfer of this action in the circumstances of this case. Counsel for the plaintiffs has contended that this court has jurisdiction by reason of section 38 of the Subordinate Courts Act (Cap. 321) which provides as follows:

> "In any action commenced by way of writ of summons in the High Court in the exercise of its original civil jurisdiction, any party may for any sufficient reason at any time apply to the High Court for an order that the proceedings be transferred to a District Court, and the High Court may thereupon, if it thinks fit, order that the proceedings be transferred accordingly notwithstanding any other provisions of this Act."

I agree. The section is clear. It gives the High Court an unfettered discretion to transfer *at any*

time any proceedings commenced by writ of summons to the District Court. The words "notwithstanding any other provisions of this Act" have the effect of vesting in the High Court the jurisdiction to increase the ordinary civil jurisdiction of the District Court.

The next issue is whether the proceedings in this action should be transferred to the District Court. It is not desirable to lay down specific rules as to when the court should exercise its discretion. Each application must be decided on its own merits. But, the reason that the District Court can offer a speedier trial cannot, by itself, be a sufficient reason. Otherwise, all High Court actions commenced by writ may be subject to transfer upon the application of either party. A valid reason would be where the proceedings have become within the ordinary jurisdiction of the District Court, whether by a change in the law or by consent of the parties (see section 23 of the Subordinate Courts Act) or by a party reducing his claim (see section 22). In all other cases, the applicant must show something more than a speedier trial and/or savings in costs (the latter merely being a consequence of the transfer). Even if the application has shown a sufficient reason, the court may still have to consider the issues of fact and law involved in that action. Some of these issues may not be suitable for trial before the District Courts, *e.g.* where the issues of fact may be complicated or are in respect of a subject matter not normally tried in such courts or the issues of law are of sufficient complexity that to allow them to be tried by a District Court would merely open another tier of appeal and thus prolong the ultimate disposal of the case.

The present action is for the balance of the price of goods sold and delivered. The defence is a denial of delivery. These circumstances justify a transfer and I so order.

Order accordingly.

Solicitors: *B.C. Yap & Co.; Goh Aik Chew & Co.*

SHELL SINGAPORE (PTE.) LTD. v. CHUAN HONG AUTO (PTE.) LTD.

[O.C.J. (Thean J.) October 20, 1987]

[Singapore – Originating Summons No. 1488 of 1986]

Land Law – Conveyancing – Lease – Terms of payment of rent – Error – Rectification – Common intention – Common mistake – Whether defendant a purchaser without notice.

Landlord and Tenant – Error in terms of payment of rent – Rectification of terms in lease – Principles applicable.

The property in the present dispute was owned by one Ong and subject to a lease then held by Shell Malaysia Ltd. ("Shell") for use as a service station, which Shell intended to re-develop in or about June 1967. It negotiated with Ong for a fresh lease of the property for a long term. A firm agreement was reached between them on the following terms: (a) that Ong would grant to Shell a fresh lease of the property for a term of 25 years with an option for renewal for a further term of 20 years on the same terms and conditions; (b) that the fresh lease was to commence on the date when the rebuilt service station became operational and opened for business; and (c) that the rent was to be $600 p.m. payable as follows: (i) a sum of $72,000, as the rent in advance for first 10 years, would be paid in October 1967, and (ii) thereafter, rent would be paid "in 5 years instalments in advance".

On September 6, 1967, a formal agreement for a lease was executed between Ong and Shell and a form of lease containing the agreed terms and conditions was attached to the agreement.

On October 4, 1967, the lease, which was stated to commence from May 1, 1968, was executed. Clause 2(a) of the lease stated the dates on which the rent would be paid but it was mistakenly stated that the second instalment would be due on May 1, 1973 instead of May 1, 1978 and that subsequent payments were to be due in 1978 and 1983.

Ong died in 1972 and the property was subsequently transferred to the defendants. The residue of the lease was eventfully assigned to the plaintiffs, who made payment of rent in advance for five years on or about May 14, 1983 to the defendants for the period May 18, 1983 to April 30, 1988. The defendants accepted payment. The plaintiffs subsequently discovered that the dates for payment of the rent in advance for the respective periods of five years were not correctly stated in the lease. They then initiated these proceedings seeking an order for rectification of the lease by deleting the dates "1st day of May 1973", "1st day of May 1978" and "1st day of May 1983" in clause 2(a) thereof and substituting therefor the dates "1st day of May 1978", "1st day of May 1983" and "1st day of May 1988" respectively. The defendants opposed the application. It was submitted on their behalf that they were *bona fide* purchasers for value who acquired the freehold reversion without any notice of such an error in the lease and that they were entitled to rely on the express terms of the lease as existed at the time.